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Federal Communications Commission

DA 94-547

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 94-49

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Commerce, Oklahoma and  
Neosho, Missouri)

RM-8446

NOTICE OF PROPOSED RULE MAKING

Adopted: May 25, 1994; Released: June 10, 1994

Comment Date: August 1, 1994

Reply Comment Date: August 16, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by KBTN, Inc. ("petitioner"), requesting the allotment of Channel 259A to Neosho, Missouri, and substitution of Channel 282A for vacant Channel 259A at Commerce, Oklahoma. Petitioner submitted information in support of the proposal and expressed an intention to apply for Channel 259A at Neosho, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed allotment at Neosho would provide the community with its first local FM broadcast service. Channel 259A can be allotted to Neosho, Missouri, in compliance with the Commission's spacing requirements provided there is a site restriction 10 kilometers (6.2 miles) south of the community.<sup>1</sup> The site restriction will prevent a short spacing to Station KHST, Channel 260A, Lamar, Missouri. To accommodate channel 259A at Neosho, petitioner requested the substitution of Channel 282A for vacant Channel 259A at Commerce, Oklahoma.<sup>2</sup> Channel 282A can be allotted to Commerce, Oklahoma, in compliance with the Commission's Rules provided there is a site restriction 9.4 kilometers (5.9 miles) northeast of the community.<sup>3</sup> The site restriction will prevent a short spacing to Station KMYZ-FM, Channel 283C1, Pryor, Oklahoma.

3. We shall also seek comments as to whether we should delete Channel 259A at Commerce, Oklahoma, to accommodate the upgrade at Neosho. Channel 259A was allotted to Commerce in MM Docket 84-231. See 100 FCC 2d 1332 (1985). A filing window was opened on January 11, 1988, and closed on February 17, 1988. The channel is currently vacant with no applications on file. If an expression of interest is filed during the comment cycle in this proceeding,

we would allot Channel 282A to Commerce and open a filing window for the new channel. It is Commission policy not to delete a channel in which interest has been expressed. However, if no interest is expressed for a channel at Commerce, we shall delete Channel 259A and no substitute allotment will be made to the community.

4. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments. Section 73.202(b) of the Commission's Rules with respect to the following communities:

OPTION I

	City	Present	Channel No.	Proposed
	Commerce, Oklahoma	259A		282A
	Neosho, Missouri	---		259A

OPTION II

Commerce, Oklahoma	259A	---
Neosho, Missouri	---	259A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before August 1, 1994, and reply comments on or before August 16, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John M. Pelkey

Haley, Bader & Potts

4350 North Fairfax Drive, Suite 900

Arlington, Virginia 22203-2345

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from

<sup>1</sup> The coordinates for Channel 259A at Neosho are 36-46-56 and 94-23-17.

<sup>2</sup> The construction permit held by Commerce Communications, Inc., for Channel 259A at Commerce expired

on August 14, 1990, and was cancelled on June 12, 1992.

<sup>3</sup> The coordinates for Channel 282A at Commerce are 37-00-24 and 94-48-54.

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial com-

ments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.